

view of Shyu. Finally, he rejected those claims as being obvious over Potash et al. in view of Huish et al. or Trulaske et al.

By this response Applicant has submitted the additional arguments below in support of the allowability of claims 3 through 13 and the declaration under 37 U.S.C. Section 1.132 of Mr. Simo Maenpaaa. A signed copy of that declaration is being submitted under separate cover.

Regarding the Examiner's first Rejection under 35 U.S.C. 112, Applicant submits the declaration of Mr. Simo Maenpaaa to show that claims 3 through 14 are adequately supported by the specification. Mr. Maenpaaa's qualifications as an expert in the subject area are set forth in paragraph 2 of the Declaration. In Section 3 he states that he is aware of the level of ordinary skill in the art relating to the receiver in question and the relevant prior art which one of ordinary skill in the field would be aware of. In that section he also specifically states that, in his opinion, the disclosure is sufficient to enable one of ordinary skill in the art to make and use the subject invention. In Section 4 he cites a number of prior art publications showing that receivers of the type in question were well known in the prior art and discussing the scientific theory upon which their design is based. Accordingly, applicant believes that this declaration overcomes the examiner's rejection of the disclosure as being insufficient.

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Regarding the Examiner's second rejection of Claims 3 through 14 as being anticipated by Huish or Trulaske, Applicant would point out that each of those claims specifically includes a means for detecting the field strength of the transmitter attached to the user of a treadmill. Particularly, independent claim 3 and each of the claims which depend from it include as a second element "means attached to the treadmill...for detecting the field strength...". Similarly, independent claim 10 and those claims that depend from it include as a third element "at least one microprocessor for detecting field strength....". The Examiner has failed to point to any component or components disclosed by Huish or Trulaske which expressly or inherently perform that function; that is, to detect field strength. Accordingly, applicant contends that the present invention according to amended claims 3 through 14 are not anticipated by either of these references.

Further, the examiner has argued that the receivers shown in Huish or Trelasky are inherently responsive to the position of the user on the endless belt because when the user is beyond the range of the receiver, no signal could be received so that the receiver is therefore sensitive to the position of the user. The Examiner should note that the present claims as amended do not include any means merely described as being responsive to the position of the user on the belt. Applicants therefore contend that this particular argument by the Examiner was overcome by the previous amendments to the claims.

*- Use Venn diagram
as an example*

In his third rejection the examiner has alleged 3 through 14 are obvious over Huish et al. or Trulaske et al. in view of Shyu. Specifically he has alleged that it would be obvious to use the teachings of Huish or Trulaske to use electromagnetic sensors to sense the position of a user on a treadmill, in view of the teachings of Shyu. In response applicant again points out that none of these references disclose any means for detecting the field strength of an electromagnetic signal emitted from a transmitter attached to the user and none of them suggest that such a means could or should be substituted in any of the structure disclosed in these references. Under 35 U.S.C. 103, the reference or combination of references must teach each and every limitation of the claimed invention. Moreover, obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching suggestion or incentive within the references supporting the combination. *In re Geiger* 2 U.S.P.Q 2nd 1276 (Fed. Cir. 1987).

Further, improper hindsight may not be used in determining obviousness. The teachings and insights learned from Applicant's disclosure should not be read into the cited references and obviousness must be determined only on the basis of the teachings available to a person of ordinary skill in the art at a time immediately prior to the applicant's state of invention. *In re Collins* 174 U.S.P.Q 333 (C.C.P.A. 1972). Therefore, Applicant believes that the suggested combination of these references is improper under 35 U.S.C. 103.

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For the same reasons stated immediately above Applicant contends that the Examiner's argument that Claims 3 through 14 are obvious over Potish in view of Huish or Telasky is also improper.

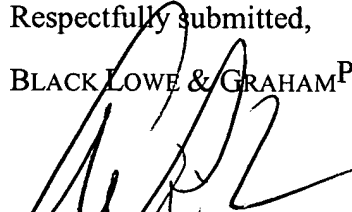
In summary, the Applicant believes that none of the references cited by the Examiner, either singularly or in combination, disclose or suggest the invention now claimed and that the invention is patentable over all prior art cited by the Examiner or known to the Applicant. Accordingly, the Applicant requests that the Examiner re-examine this application in view of the above amendments and remarks, withdraw all rejections and objections of record, and allow each of the claims now proposed.

In the event additional fees are due as a result of this amendment, payment for those fees has been enclosed in the form of a check. Should further payment be required to cover such fees you are hereby authorized to charge such payment to Deposit Account No. 501050.

DATED this 3rd day of December, 2003.

Respectfully submitted,

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